suggestion of Professor Greenleaf by voluntary subscriptions of the students. The original subscription list signed by sixty-three students is in the Harvard Law Library.

Judge Story died in 1845, and Professor Greenleaf resigned in 1848, because of failing health, having performed almost all the work of the School from the death of Story. The Dane Professorship was then accepted by Theophilus Parsons, of Brookline. The Royall Professorship was filled in 1847 by the appointment of Joel Parker, Chief Justice of New Hampshire. In 1855 the University Professorship was revived by the exertions of Professor Parsons, who secured the appointment of Emory Washburn, of Worcester, who was at that time just quitting the Governorship of Massachusetts. Those who had the honor and privilege of knowing the last three named, Parsons, Parker, and Washburn, will not be content without reading all that Mr. Batchelder has said of them. J. H. A.

RIGHT OF MAJORITY STOCKHOLDERS TO TRANSFER ENTIRE CORPORATE PROPERTY. — An important question bearing on the legality of combinations of capital is whether the majority of the stockholders of a prosperous private corporation have the right to transfer its entire property against the will of the minority. The American authorities upon the subject are collected and commented upon in a recent magazine article. *Right of a Private Corporation to transfer Property*, by Gordon Paxton, 8 Va. L. Reg. 1 (May, 1902). The writer found no decision recognizing this right. He states, however, that "while the courts have practically denied the power, they afford a very inadequate remedy against the formation of trusts, since no one can generally complain except a non-assenting stockholder," and he can usually be bought up. The article is to be commended for its very valuable collection and summary of authorities. But the author's conclusion that the law is in the unfortunate condition in which the violation of a right is recognized and yet no adequate remedy provided, seems inexact and suggests a possible misconception of the theoretical basis of the question.

Combinations of capital are usually effected by the creation of a new corporation to which several existing corporations transfer their entire property, receiving in exchange stock of the new company for distribution among their shareholders. Assuming the existence of a dissenting minority in any of the corporations thus consolidating, the legality of the transaction depends, in the first place, upon the authority conferred upon corporations by the state to transfer their entire property for such a purpose, and, secondly, upon the authority which the majority have received from the individual shareholders to represent them in such a matter. If the latter authority alone be denied, the non-assenting stockholders are obviously the only parties deserving a remedy. The cases collected by Mr. Paxton show that this hypothesis exists in fact, and they thus prove, contrary to his conclusion, that courts do give a remedy commensurate with the violation of the right in issue. The difficulty with his position seems to lie in a failure to recognize that the majority's right to act springs from the enumerated two sources.

Whether the power to transfer their entire property for purposes of combination has been impliedly conferred on corporations by the state, is a question rarely passed upon by the courts. The power has never been denied by actual decision. In the few cases where courts specifically considered the question, no large combination of capital was attempted and only private interests were involved. The decisions accordingly are not conclusive that such a power exists. Indeed language by courts is to be found where its existence appears to be denied. See *People* v. *Ballard*, 134 N. Y. 269.

To determine the extent of the implied authority conferred by the individual shareholders upon the majority, a business view must be taken as to the situation of the parties to the agreement of incorporation. In many respects the majority must be considered as empowered to act; for otherwise corporate business would be impossible. One clear limitation, however, is that the ma-

jority should act within the corporate powers; anything that the stockholders acting unanimously cannot do, *a fortiori* a mere majority cannot do. Certain other restrictions in regard to the alienation of the entire property are recognized. The transfer cannot be made in exchange for the stock of another corporation either to be held by the transferring corporation as an investment or to be distributed among its shareholders against the will of the minority. See *Byrne* v. *Schuyler Mfg. Co.*, 65 Conn. 336, and *Elyton Land Co.* v. *Dowdell*, 113 Ala. 177. Since transactions of this nature, as already stated, are the usual method of trust formation, it follows that a minority stockholder can generally prevent his corporation from entering the combination. The fact, however, that transfers in connection with objectionable transactions are not allowable does not negative the right to transfer the entire property if the transactions are unobjectionable. See TAYLOR, CORP., 3d ed., § 608. If a sale be made in open market for the purpose of distributing the net proceeds among the shareholders, the majority may be acting within their authority. From a business standpoint, the stockholders may well be regarded as stipulating in their contract of association that if a majority of them wish to wind up affairs and distribute cash this can be done without procuring the consent of each individual. The transaction in its objectionable form of receiving stock in payment would seem to come within such an authorization only if the non-assenting shareholder were given the option of a price equal to his proportionate part of the value of the net assets of the old corporation. Since generally this price could be determined only by an actual sale in open market, it would be extremely difficult to show that the option was in fact given in any particular case.

The dissenting stockholder's right to object to combination in the manner in which it is usually attempted seems therefore clearly established, and is based on a lack of authority in the majority to represent the minority in the objectionable transactions. Whether the state has a right to interfere on the ground that its sanction has not been given, is an open question; it is at least true that such a right has not been denied.

LIMITATIONS UPON MUNICIPAL TAXING POWER. — A recent decision of the highest court of Virginia affirms the validity of a license tax of $500 a year imposed upon proprietors of labor agencies by a municipal corporation under a general grant of taxing power, on the ground that the reasonableness of such a tax is not a judicial question. *Woodall* v. *City of Lynchburg*, 40 S. E. Rep. 915 (Va.). An interesting article in the Virginia Law Register contends that the municipality has no power to lay an unreasonable tax. The author further maintains that the legislature itself cannot impose upon a calling which it might not prohibit under the police power, a tax so great as to prevent one from following that calling; and that a municipality, since it derives its powers solely from the legislature, must be subject to the same limitation. *License Taxation by Municipal Corporations. Is the Power Unlimited in Virginia?* By Jno. G. Haythe, 8 Va. L. Reg. 13 (May, 1902).

It is thought, however, that the proposition that even the legislature itself has no power to levy a prohibitive tax, is not supported by the weight of authority. The author's argument is that the Constitution of Virginia (in common with the Federal Constitution) protects the citizen in his right to follow a lawful vocation, and that when the legislature attempts to prohibit such a calling under the guise of an exercise of the taxing power, the courts may interfere. The general rule is, however, that the courts will not impute a wrong motive to the legislature in exercising its admitted powers. *Veazie Bank* v. *Fenno*, 8 Wall (U. S. Sup. Ct.) 533; *State* v. *Harrington*, 68 Vt. 622. It will be presumed that the purpose was to raise revenue, not to destroy the occupation.

The author's position that a municipal corporation may not impose an unreasonable tax under a general grant of taxing power seems better taken. It may